

AGENDA

COMMITTEE ON LANDS AND BUILDINGS

June 5, 2007

**Aldermen Thibault, Smith,
Forest, Roy and Long**

3:30 PM

**Aldermanic Chambers
City Hall (3rd Floor)**

1. Chairman Thibault calls the meeting to order.
2. The Clerk calls the roll.
3. Communication regarding changes requested relating to a license agreement between MHRAI, Inc. and Energy North Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England.
Gentlemen, what is your pleasure?
4. If there is no further business, a motion is in order to adjourn.



KeySpan Energy Delivery
52 Second Avenue
Waltham, Massachusetts 02451

June 4, 2007

Henry Thibault, Chairman
Lands & Buildings Committee
Honorable Board of Mayor and Aldermen
City of Manchester
One City Hall Plaza
Manchester, NH 03101

RE: Merrimack River Environmental Remediation

Dear Alderman Thibault and Members of the Committee:

As you are aware, EnergyNorth Natural Gas d/b/a KeySpan Energy Delivery New England (KeySpan) is undertaking an environmental remediation project to dredge contaminated sediments from the Merrimack River in Manchester. During this project, KeySpan's contractors will be moving sediments from the river to an offloading area located on a portion of the former Jac Pac property at 163 Hancock Street, which KeySpan will be leasing from Manchester Housing and Redevelopment Authority. To ensure the safety of the public during the construction, it is necessary to close a portion of the Riverwalk immediately adjacent to the offloading area, for a period of approximately six months, beginning in mid-June of this year.

Although we had previously contemplated temporarily relocating the Riverwalk, that alternative has proved to be too costly, and, more importantly, presents safety concerns since pedestrians will necessarily need to be rerouted through the construction site. As a result, KeySpan proposes that it would be in the public interest to close the Riverwalk during the construction phase.

We are aware that the Riverwalk is a well utilized resource in the summer months, and it's closure might be disappointing to some. In consideration of the temporary inconvenience to the public, KeySpan proposes to provide the City of Manchester with a \$50,000 contribution for aesthetic and other improvements to the area surrounding the Riverwalk, within one year of the date of this letter. We trust that the long term benefits to the City and it's residents, both of our clean up of the river and the improvements to the Riverwalk, will outweigh the temporary disruption. Thank you for your consideration of this request, and please do not hesitate to contact me at 781-466-5414, if I can be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patricia A. Haederle", written over a horizontal line.

Patricia A. Haederle, CPG
New England MGP Program Manager

cc: Deb Hale, KeySpan

To the Board of Mayor and Aldermen of the City of Manchester:

The Committee on Lands and Buildings respectfully recommends, after due and careful consideration, that the Board of Mayor and Aldermen approve a License Agreement between MHRAI, Inc. and Energy North Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England for property located at 163 Hancock Street providing for the temporary storage and processing of sediment that shall be dredged from the Merrimack River as enclosed herein subject to the following modifications:

1. That the agreement contain language inclusive of pre-soil testing and post-soil testing requirements to be met by KeySpan;
2. That the agreement contain language of indemnification agreeable to the City Solicitor that covers both the City and future purchaser(s) as may be reflected in a purchase and sales agreement executed by the City; and
3. That should asphalt damages occur to the pavement area, the replacement of same be done with loam rather than paving.

The Committee recommends that the City's concurrence of approval of the agreement, be issued to the Manchester Housing and Redevelopment Authority by the Office of the City Solicitor when modifications have been made meeting the conditions set forth herein.

(Unanimous vote.)

Respectfully submitted,



Clerk of Committee

LICENSE AGREEMENT

This License Agreement (the "Agreement"), made this ____ day of _____, 2007 by and between **MHRAI, Inc.**, with principal offices at 198 Hanover Street, Manchester, New Hampshire 03104 (hereinafter referred to as "Licensor"), and **Energy North Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England**, a New Hampshire corporation, having its principal office at 52 Second Avenue, Waltham, MA 02451 (hereinafter referred to as "Licensee"). Licensor and Licensee are collectively referred to herein as the "Parties."

WITNESSETH

WHEREAS, Licensor is the owner of certain real property located at 163 Hancock Street, Manchester, New Hampshire 03104, which property is described and more particularly identified in Exhibit A ("Licensor's Property"), attached hereto and made a part hereof; and

WHEREAS, Licensor has agreed to grant a license to Licensee for Licensee's use of a portion of Licensor's Property, consisting of a vacant area of approximately 50,000 sq.-ft. within the parking lot of Licensor's Property, for the temporary storage and processing of sediment that shall be dredged from the Merrimack River. Such portions of Licensor's Property, as described in Exhibit A are referred to herein as the "Site."

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, Licensor hereby grants to Licensee a license to enter upon, use and occupy the Site, as set forth herein.

ARTICLE I APPROVED ACTIVITIES AND ACCESS

A. Licensor hereby grants to Licensee and the Licensee Parties (as defined herein), subject to the terms and conditions hereof, a license to enter upon, use and occupy the Site solely for the purpose of the temporary storage and processing of sediment that shall be dredged from the Merrimack River. The specific activities listed below under this Subsection A are referred to herein as the "Approved Activities."

Approved Activities:

- Construction of temporary sediment containment areas and construction of a temporary floating dock and access ramp from the Merrimack River to the Jac Pac Plant Property.
- Selective trimming of brush and/or tree limbs as permitted by the New Hampshire Department of Environmental Services (the "NHDES") and other applicable federal, state or local authorities.
- Temporary storage and stabilization of dredged sediment and temporary storage and use of equipment and materials necessary to perform the stabilization of the dredged sediment.

- Staging and use of temporary office trailers, storage trailers and portable sanitary facilities.
- Establishment of temporary electric, phone and cable service lines and meters.
- Installation of temporary fencing and implementation of additional temporary Site improvements as may be necessary for security and lighting.
- Temporary closing or rerouting of the walkway between Licensor's Property and Merrimack River.
- Restoration of the Site to its original condition at the completion of Approved Activities as specified in the Scope of Work, as set forth in Exhibit B, attached hereto and made a part hereof.

The Approved Activities are more particularly described in Licensee's Scope of Work, attached hereto as Exhibit B .

B. In performing the Approved Activities, Licensee shall take all necessary and reasonable precautions for the health and safety of its employees, agents, contractors and subcontractors (collectively, the "Licensee Parties"), Licensor's employees, agents, contractors, subcontractors, tenants, licensees and invitees ("Licensor Parties"), the general public, and prospective developers.

C. This Agreement shall not be deemed to grant Licensee any right to use the Site for any purpose other than the Approved Activities. Other than the Licensee Parties, Licensee shall not permit any persons or entities to use the Site for any purpose other than as contemplated by this Agreement. Nothing in this Agreement is intended to create any third party rights or confer such rights upon any person or entity, other than the Parties hereto and the Licensee Parties.

D. Licensor and Licensor's designees retain the right to access the Site to review the Approved Activities.

E. In performing the Approved Activities the Site must remain secured. Therefore, all work must either be done during the normal work hours of the security staff on Site or the Licensee shall provide additional security staff.

ARTICLE II

TERM OF AGREEMENT, RENT

A. The term of this Agreement shall commence upon Licensee's access onto the Site on or about June 1, 2007, for a term of eight (8) months (the "Term") and is subject to renewal upon the express written consent of Licensor. Work will not commence until the Licensor has received and approved the NHDES permit.

B. Licensee's rent shall be Eight Thousand Dollars (\$8,000.00) per month or any part thereof and shall be due on or before the first day of each month. Rent payments shall be made payable to the MHRA I, Inc. and mailed to the attention of Kenneth R. Edwards at 198 Hanover Street, Manchester, New Hampshire 03104.

C. Licensors may terminate this License Agreement with a thirty (30) day written notice to the Licensee.

ARTICLE III

WORK, MAINTENANCE, RESTORATION, AND REPAIR

A. All of the costs and expenses related to the foregoing work and the Approved Activities shall be the sole responsibility of Licensee.

B. In the course of performing the Approved Activities, Licensee shall keep the Site in a secure and orderly condition as determined by Licensors. Licensee shall repair any damage Licensee or the Licensee Parties may cause to the Site and, upon vacating the Site, restore the Site to the original condition, reasonable wear and tear excepted.

ARTICLE IV

COMPLIANCE WITH LAWS

Licensee will comply with any and all applicable laws, ordinances, permit and zoning requirements of any federal, state or municipal body or agency pertaining to Licensee's use and occupation of the Site and performance of the Approved Activities.

ARTICLE V

HOLD HARMLESS

Licensee shall indemnify and hold harmless Licensors from any liabilities, losses or damages, arising out of Licensee's negligent use or intentional misuse of the Site or any unintended consequence resulting from the Approved Activities. Licensors shall have the right to demand that Licensee undertake to defend any and all such claims, providing only that the claim shall be against Licensors. Licensee shall have no obligation to indemnify or defend against any loss, judgment, claim or suit to the extent such loss, judgment, claim or suit is the result of the negligence or willful misconduct of Licensors.

ARTICLE VI

ENVIRONMENTAL MATTERS

A. Licensee represents and warrants that, with respect to releases or threats of releases of hazardous materials at the Site occurring during the Term of this Agreement which Licensee cause or for which Licensee is otherwise legally responsible, Licensee shall provide all required notifications and shall promptly take all actions necessary and required pursuant to all applicable law to abate, prevent, and eliminate the release or threat of release of hazardous materials.

B. Licensee shall indemnify and hold harmless Licensors from any liabilities, losses or damages arising out of any release of hazardous materials at the Site occurring during the Term of this Agreement which Licensee causes or for which Licensee is otherwise legally responsible, including without limitation any such claims or losses due to alleged property

damage or personal injury, or injury, destruction, or loss of natural resources or which may occur after the term of this License but arise as a result of the Approved Activities.

ARTICLE VII **INSURANCE REQUIREMENTS**

Prior to the commencement of the Approved Activities, a Certificate of Insurance from Licensee and/or all of Licensee's contractors/subcontractors, that perform activities on the Site relative to this Agreement, shall be furnished to Licensors by Licensee and/or Licensee's contractors/subcontractors. Licensee shall procure and Licensors must be added to and insured under (i) a commercial general liability policy of not less than One Million (\$1,000,000) Dollars, (ii) an umbrella policy covering protection in an amount not less than Three Million (\$3,000,000) Dollars combined single limit coverage for injury, death, and property damage arising out of any one occurrence, and such policy must not contain any "x, c and u" exclusions, (iii) an automobile liability policy covering all owned, hired and non-owned vehicles with a combined single limit of not less than One Million (\$1,000,000) Dollars, and (iv) Worker's Compensation and Employer's Liability as required by law. Licensee shall name MHRA I, Inc. and the City of Manchester as an additional insured (except for Worker's Compensation). The certificate of insurance shall contain a provision whereby the policy may not be canceled unless Licensors is given at least (30) days prior written notice of such cancellation. Insurance as specified herein must be maintained at all times throughout the Term of this Agreement.

ARTICLE VIII **NOTICES**

Any notice or demand which, under the terms of this Agreement, or under any statute, must or may be given or made by the Parties hereto, shall be in writing, and may be given or made by hand delivery, provided same is acknowledged by written receipt, or by mailing the same by registered/certified mail, return receipt requested, or by nationally recognized overnight delivery service, addressed to the other Party at the following addresses:

(a) For Licensors:

Kenneth R. Edwards
Assistant Executive Director
Manchester Housing and Redevelopment Authority
198 Hanover Street
Manchester, New Hampshire 03104

(b) For Licensee:

Brian J. Mulcahy, Counsel
Energy North Natural Gas, Inc. d/b/a
KeySpan Energy Delivery New England
52 Second Avenue
Waltham, Massachusetts 02451

ARTICLE IX
GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

ARTICLE X
ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the Parties regarding access to, and use and occupancy of, the Site, and the Approved Activities, and no amendments, additions or modifications hereto shall be valid unless in writing and signed by the Parties hereto.

ARTICLE XI
BINDING EFFECT

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

ARTICLE XII
RISK OF LOSS

Licensee shall bear the entire risk of loss or damage to its personal property arising out of its respective use and occupation of the Site.

ARTICLE XIII
ASSIGNABILITY AND ADDITIONAL PARTIES

This Agreement and the rights and obligations associated herewith may not be assigned or transferred by Licensee without the prior written consent of Licensor, such consent not to be unreasonably withheld.

ARTICLE XIV
SEVERABILITY

If any provision of this Agreement shall be declared to be unenforceable in a particular jurisdiction, the remaining provisions hereof shall remain in full force and effect.

ARTICLE XV
COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and which shall constitute the same instrument.

ARTICLE XVI
WAIVER

No delay or omission by either Party in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed, or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient.

If any agreement or covenant herein shall be breached by either Party and thereafter waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XVII
ARTICLE HEADINGS

The article headings and other titles used in this Agreement are for convenience only and shall not affect the construction of any terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

ENERGY NORTH NATURAL GAS, INC.
D/B/A KEYSpan ENERGY DELIVERY
NEW ENGLAND

By: Barbara Kates-Garnick

Name: Barbara Kates-Garnick

Title: Vice-President

Date: May 21, 2007

MHRA I, Inc.

By: _____

Name: _____

Title: _____

Date: _____

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Exhibit "A"
(Licensor's Property)

Exhibit "B"
(Licensee's Scope of Work)